IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 513 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF CHIMANLAL AMBARAM VASAIWALA

Versus

HEIRS OF NAVNITLAL AMBARAM VASAIWALA

Appearance:

1. First Appeal No. 513 of 1986

MR SH SANJANWALA for Appellant Nos. 1-1/1

..... for Respondent No. 1

MR SN SHELAT for Respondents No. 1/1

MR SURESH C SHAH for Respondents No. 1/2-1/6

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/2002

ORAL JUDGEMENT

In this appeal filed under Section 96 of the Code of Civil Procedure, ('The Code' for short), appellant, that is the original defendant No.1 has brought under challenge the judgement and decree dated December 12, 1985 recorded in Special Suit No. 112 of 1982 by the learned 3rd Joint Civil Judge, (SD) Surat by which he has decreed the suit filed by the present respondent/plaintiff and thereby held that respondent has got one half share in the suit property and commissioner be appointed for distribution and consideration of one half share of the respondent/plaintiff from the suit property and for taking accounts for mesne profit and rent.

2. This appeal was admitted way back on October 14, 1986 by this Court. This matter is listed before this Court with the note filed by respondent No.2 wherein it is stated that the matter has been settled between the parties amicably and as per the said settlement respondent has paid the amount to the appellant and got possession of the disputed one half property and as per their settlement appellant has mentioned that so far as First Appeal No. 513 of 1986 filed by him, he does not intend to proceed with the matter. The registry has placed this matter before this Court along with the said note. This Court (Coram : M.R.Calla, J) vide order dated February 9, 2001 recorded the following order :

"Heard Mr. SH Sanjanwala, learned counsel for the appellant and Mr. SC Shah, learned counsel for the respondents. Mr. Shah submits that the matter has already been settled between the parties and the copy of the same has been passed over to Mr. SH Sanjanwala. Mr. Sanjanwala wants time to take instruction from his client. Put up on 23rd February 2001."

After recording the aforesaid order registry has placed this matter before this Court by showing it on the board.

3. None appeared on behalf of the appellant. Mr. S.C.Shah, learned advocate for the respondents is present. He has stated that time was granted by this Court to take instructions from the appellant on February 9, 2001 and according to him matter has been amicably settled between the parties. Therefore, this matter is not required to be prosecuted further.

4. I have perused the Kabja receipts annexed by the

learned advocate for the respondents Mr. S.C.Shah along with the notes and on having perusal of the same it appears that the matter has been amicably settled between the parties. In the said Kabja receipts reference is made with reference to pendency of First Appeal No.513 of 1986. It is also stated therein that the appellant is not intending to prosecute this appeal. In view of this this appeal has now become infructuous which is required to be disposed of.

5. For the foregoing reaosons, the appeal is accordingly disposed of as it does not assume any survival value. No order as to cost.

(A.M.Kapadia, J)

Jayanti*